

## **Chapter 3**

### **ADMINISTRATION**

#### **Articles:**

- 3-1 OFFICERS IN GENERAL**
- 3-2 MERIT SYSTEM**
- 3-3 PROCUREMENT**
- 3-4 DISPOSITION OF PROPERTY**
- 3-5 CIVIL PREPAREDNESS AND DISASTER**

**Article 3-1**

**OFFICERS IN GENERAL**

**Sections:**

- 3-1-1            Town Manager**
- 3-1-2            Town Attorney**
- 3-1-3            Town Presiding Judge**
- 3-1-4            Town Clerk**
- 3-1-5            Town Marshal/Law Enforcement Agent**
- 3-1-6            Department Directors**
- 3-1-7            Additional Officers**
- 3-1-8            Vacancies; Deputies; Holding More than One Office**
- 3-1-9            Additional Powers and Duties**

**Section 3-1-1    Town Manager**

- A.    Office Created. The office of the Town Manager is hereby created and established. The Town Manager shall be appointed by the Council on the basis of executive and administrative qualifications with special reference to actual experience in or knowledge of accepted practice in respect to the duties of office as hereinafter set forth; and he shall hold office for and at the pleasure of the Council.
- B.    Eligibility. Residence in the Town at the time of appointment shall not be required as a condition of appointment. However, within six months from the date of appointment, the Town Manager must become a resident of the Town, unless an extension of time is granted by the Council.
- C.    Bond. Unless a blanket bond or other equivalent coverage is provided by the Town, prior to taking office, the Town Manager shall execute and file an official bond, enforceable against the principal and his sureties, conditioned on the due and faithful performance of his official duties, payable to the Town and to and for the use and benefit of the Town or any person who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity. Bonds shall be in such sum as set forth in ARIZ. REV. STAT. § 38-251 *et seq.*, as amended, and the premium for such bonds shall be paid by the Town.
- D.    Absence. The Deputy Town Manager shall perform the duties of the Town Manager during his absence. In the event the Deputy Town Manager is unable or unavailable to perform such duties, the Town Manager may appoint such other Town Employee as he deems appropriate to serve as the acting Town Manager. If the Town Manager is unable to make such appointment to perform the duties of Town Manager during the temporary absence or disability of the permanent Town Manager, the Council may designate a qualified administrative officer to perform the Town Manager's duties.
- E.    Removal. The Town Manager may be removed by the Council by a majority vote of its members immediately for cause or upon such notice as is set forth in the Town Manager's employment contract without cause. As used herein and as it relates to the termination of employment of the Town Manager, the term "for cause" shall mean malfeasance in office or willful breach or habitual neglect of duties, as such duties are described in this Section, illegal activity within or without the conduct of this office or any other cause set forth in the Town Manager's employment contract.

## Fountain Hills Town Code

- F. Resignation. The Town Manager shall give such notice as set forth in his employment contract prior to resigning the office of Town Manager.
- G. Compensation. The Town Manager shall receive such compensation as the Council shall from time to time determine, and said compensation shall be a proper charge against such funds of the Town as the Council shall designate. The Town Manager shall be reimbursed for all sums necessarily incurred or paid by him in the performance of his duties, or incurred when traveling on business pertaining to the Town as approved by the Council; reimbursement shall be made only when a verified, itemized claim, setting forth the sums expended for which reimbursement is requested, has been presented and approved by the Town Finance Division.
- H. Powers and Duties. The Town Manager shall be the administrative officer of the Town government and shall be responsible to the Council for the proper administration of all affairs of the Town under the specific direction and control of the Council. In addition to the general powers as the chief administrative officer and not as a limitation thereon, it shall be the Town Manager's responsibility and authority:
1. To see that all laws and ordinances of the Town are duly enforced, and that all franchises and privileges granted by the Town are faithfully observed.
  2. To appoint and, when necessary, suspend or remove all employees of the Town, except those officers appointed by the Council. All appointments and removals shall be based upon merit and upon the qualifications and disqualifications of such employee without regard to any political belief or affiliation.
  3. To coordinate the administrative functions and operations of the various departments, divisions, services, boards, committees and commissions of the Town government, and on its behalf to carry out policies, rules, regulations and ordinances adopted by it, relating to the administration of the affairs of such departments, divisions, services, boards, committees or commissions. Such powers and duties to be subject to the following provisions:
    - a. That the organizational structure under which municipal services are performed shall be specified in an organization chart approved by the Council.
    - b. That prior to any creation, combination, consolidation or deletion of any positions of employment, written job descriptions or amendments thereto shall have been approved by the Council.
  4. To attend all meetings of the Council unless excused therefrom and to attend, or designate appropriate Town Staff to attend all board, commission and committee meetings.
  5. To recommend to the Council for adoption such matters, ordinances and resolutions as are necessary.
  6. To recommend to the Council at periodic intervals changes needed in the Town Code.
  7. To keep the Council at all times fully advised as to the financial conditions and needs of the Town. To provide whatever reports to the Council as it may deem necessary.

## Fountain Hills Town Code

8. To prepare and submit to the Council a proposed annual budget for the next fiscal year, including financial projections for the subsequent four fiscal years.
  9. To analyze the functions, duties and activities of the various departments, divisions, services, boards, committees and commissions of the Town government and of all employees thereof, and to make such recommendations to the Council to achieve the highest degree of efficiency in the overall operation of the Town government.
  10. To investigate all complaints in relation to matters concerning the administration of the Town, its departments and all services provided to it by contract with another entity.
  11. To exercise general supervision over all public buildings, public parks and other public property that are under the control and jurisdiction of the Council.
  12. To devote as much time to the duties of the office of Town Manager and the interest of the Town as necessary.
  13. To perform such other duties and exercise such other powers as may be delegated from time to time by ordinance, resolution or affirmative vote of the Council.
- I. Council to Act Through Town Manager. Except for the purpose of inquiry, the Council and its members shall deal with the administrative branch solely through the Town Manager, and neither the Council nor any member thereof shall give orders to any subordinate of the Town Manager either publicly or privately.
- (13-04, Amended, 11/21/2013)

### **Section 3-1-2 Town Attorney**

The Town Attorney shall be appointed by and serve at the pleasure of the Council and shall act as the legal counselor and advisor of the Council and, as such, shall give his opinion in writing when requested. He shall draft or supervise the drafting of all deeds, contracts, conveyances, ordinances, resolutions and other legal instruments before final approval or acceptance thereof by the Council. He shall ensure that the Town is represented by legal counsel in the prosecution or defense of all suits, actions or causes where the Town is a party and shall report to the Council, when required, the condition of any suit or action to which the Town is a party.

(13-04, Amended, 11/21/2013)

### **Section 3-1-3 Town Presiding Judge**

The Town Presiding Judge shall be appointed by the Council and shall be the presiding officer of the municipal court. He shall perform those functions necessary to the maintenance of the municipal court as provided by state law and shall have the powers and duties as set forth in Chapter 5 of this Code.

(13-04, Amended, 11/21/2013; 02-03, Amended, 03/21/2002)

### **Section 3-1-4 Town Clerk**

- A. Records. The Town Clerk shall be the Town's custodian of records and shall keep a true and

## Fountain Hills Town Code

correct record of all business transacted by the Council and any other records that either pertain to the business of the Town or that the Council directs. The Town Clerk or authorized designee shall keep such records in the manner set forth in the records retention process approved for Arizona municipalities by the Arizona State Library, Archives and Public Records Division and pursuant to any other applicable statutory requirements.

- B. Public Inspection of Records. The Town Clerk shall keep convenient for public inspection all public records and public documents under his control, as provided by state law.
- C. Minutes. The Town Clerk shall prepare or cause to be prepared all minutes of Council proceedings and ensure their correctness and accuracy.
- D. Ordinances, Resolutions, Budgets and Notices. The Town Clerk or authorized designee shall process, record, file, publish and, if required by state statute, post all ordinances, resolutions, budgets and notices that may be passed by the Council.
- E. Election Official. The Town Clerk shall be the Town election official and perform those duties required by state law.
- F. Administrative Duties. The Town Clerk shall perform those administrative responsibilities and duties that are conferred upon him by the Town Manager in addition to those specified in state law or in this Code.

(13-04, Amended, 11/21/2013)

### **Section 3-1-5 Town Marshal/Law Enforcement Agent**

The Town Manager or authorized designee shall serve as the Town Marshal/Law Enforcement Agent and shall provide for enforcement of Town codes, ordinances or other regulations. The Town shall have the authority to enter into an intergovernmental agreement or contract for the provision of law enforcement services.

(13-04, Amended, 11/21/2013; 06-14, Amended, 05/18/2006)

### **Section 3-1-6 Department Directors**

- A. There are hereby created the following departments, each of which shall be under the immediate direction of a department director or the Town Manager, as designated in the adopted organizational chart:
  - 1. Administration Department
  - 2. Community Services Department
  - 3. Development Services Department
  - 4. Fire Department
  - 5. Police Department

## Fountain Hills Town Code

- B. Each department director shall be selected by and report to the Town Manager; provided, however, that selection of the department directors for the Police and Fire Departments shall be in accordance with the contracts for those services. Department directors, except for Police and Fire, shall be subject to the merit system.

(13-04, Amended, 11/21/2013; 06-14, Amended, 05/18/2006)

### **Section 3-1-7 Additional Officers**

The Council may appoint and remove from time to time such other officers as it may deem necessary and that are not provided for in this Code or state statute.

(13-04, Amended, 11/21/2013)

### **Section 3-1-8 Vacancies; Deputies; Holding More than One Office**

- A. A vacancy in any office not subject to Council appointment shall be filled by the Town Manager.
- B. The powers and duties of any of the offices enumerated in Section 3-1-6 may be performed by a deputy upon authorization of the Town Manager.
- C. It shall be lawful for one person to hold more than one office, but such person shall be compensated only for one office to which he has been regularly appointed, unless specified otherwise by the Council.

(13-04, Amended, 11/21/2013)

### **Section 3-1-9 Additional Powers and Duties**

In addition to any powers and duties prescribed in this Code, each officer shall have such further powers, perform such further duties and hold such other offices as the Council may provide.

(13-04, Amended, 11/21/2013)

## **Article 3-2**

### **MERIT SYSTEM**

#### **Sections:**

- 3-2-1            Creation and Scope**
- 3-2-2            Conditions of Employment; Non-discrimination**
- 3-2-3            Rules and Regulations**
- 3-2-4            Political Activity**

#### **Section 3-2-1   Creation and Scope**

- A.     There is hereby created and adopted a merit system governing the employees of the Town, except those enumerated in this Section, for the purpose of regulating the conditions of employment and removal of employees of the Town.
- B.     The merit system adopted by this Article shall not apply to elected officials; officers subject to appointment and removal by the Council; consultants hired on a contract basis; contract employees; temporary employees; volunteer workers who receive no regular compensation from the Town and members of boards, committees and commissions established by the Council.

(13-04, Amended, 11/21/2013)

#### **Section 3-2-2   Conditions of Employment; Non-discrimination**

The appointment, promotion and tenure of all employees identified in Section 3-2-1 shall be conditioned solely on merit, fitness and the satisfactory performance of the duties and responsibilities assigned. No employee or applicant for employment shall be discriminated against on the basis of age, race, color, religion, gender, political affiliation, disability or impairment.

(13-04, Amended, 11/21/2013)

#### **Section 3-2-3   Rules and Regulations**

The Council shall adopt by ordinance or resolution written rules and regulations to give effect to this Article.

(13-04, Amended, 11/21/2013)

#### **Section 3-2-4   Political Activity**

- A.     All employees will remain free from any political activity while on duty.
- B.     An employee may exercise his rights as a citizen to vote and to express opinions as an individual citizen, but not as a representative of the Town.
- C.     No paid employee will seek election to public office with the Town while still employed by the Town.

## Fountain Hills Town Code

- D. No paid employee will use his position to sell, solicit or distribute any campaign material during working hours or while in a uniform or with visible identification used by or identified with the Town government.
- E. No paid employee will use his position to introduce, guide or recommend any candidate for public office on Town property.

(13-04, Amended, 11/21/2013)



**Article 3-3**

**PROCUREMENT**

**Sections:**

**PART I - GENERAL PROVISIONS**

- 3-3-1 Purposes**
- 3-3-2 Policies**
- 3-3-3 Application; Exclusions**
- 3-3-4 Definitions**
- 3-3-5 Budgeting**
- 3-3-6 Procurement Agent**
- 3-3-7 Procurement by Dollar Value; Execution**
- 3-3-8 On-line Bidding**
- 3-3-9 Purchase Orders**
- 3-3-10 Reserved**

**PART II - ETHICS; VIOLATIONS; UNAUTHORIZED PURCHASES**

- 3-3-11 Ethical Standards**
- 3-3-12 Ethical Violations**
- 3-3-13 Unauthorized Purchases, Violation, Liability, Enforcement**
- 3-3-14 Reserved**
- 3-3-15 Reserved**

**PART III - FORMAL BIDDING PROCEDURES**

- 3-3-16 Applicability**
- 3-3-17 Public Notice**
- 3-3-18 Bid or Proposal Guarantee**
- 3-3-19 Confidential Information**
- 3-3-20 Invitation for Bids**
- 3-3-21 Request for Proposals**
- 3-3-22 Withdrawal or Cancellation of Bids or Proposals**
- 3-3-23 Retention of Professional Services; Requests for Qualifications**
- 3-3-24 Construction Contracts**
- 3-3-25 Emergency Procurements**
- 3-3-26 Sole Source Procurement**
- 3-3-27 Cooperative Purchasing**
- 3-3-28 Protests; Informal and Formal**
- 3-3-29 Debarments and Suspensions**
- 3-3-30 Acceptance of Work Completed**
- 3-3-31 Attestation of Contracts by the Town Clerk**

**Section 3-3-1 Purposes - PART I General Provisions**

The purposes of this Article are to:

- A. Establish standard policies and practices for the Procurement of Materials and Services and permit the continued development of Procurement policies and practices.

- B. Serve as an aid in providing all Materials and Services at the appropriate time, place, quantity, purpose and Price to meet the operational requirements of the Town.
- C. Ensure the fair and equitable treatment of all Persons who participate in the Procurement system of the Town and foster effective broad-based competition within the free enterprise system.

(13-04, Amended, 11/21/2013)

### **Section 3-3-2 Policies - PART I General Provisions**

The Town shall procure all Materials and Services deemed necessary for the delivery of quality service to its residents using competitive bids, Proposals, Vendor quotations or direct purchases. A complete history of each purchase of Materials or Services will be maintained through the use of purchase requisitions, purchase orders, check requests, petty cash vouchers and any other appropriate forms as authorized by this Article and as set forth in the Procurement Policy. Every effort will be made to obtain all Materials and Services at the most economical prices available. All Procurement Contracts shall be drawn by or under the supervision of the Town Attorney.

(13-04, Amended, 11/21/2013; 98-27, Amended, 09/03/1998)

### **Section 3-3-3 Application; Exclusions - PART I General Provisions**

- A. This Article shall apply to every expenditure of public monies by the Town, except as otherwise specified in this Article. Nothing in this Article shall prevent any Town department from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement. In the event of a conflict between the terms of this Article and the terms of any federal or state grant, the terms of any such grant shall govern.
- B. This Article shall not apply to the following:
  - 1. Contracts between the Town and the federal government, the State of Arizona and political subdivisions of the State of Arizona.
  - 2. Contracts for expert services, if the purpose of such services is to provide for Professional Services relating to an existing or probable lawsuit in which the Town is or may become a party or to Contracts for special investigative Services for law enforcement or administrative investigation purposes.
  - 3. Agreements negotiated by legal counsel representing the Town in settlement of pending litigation or threatened litigation.
  - 4. Development agreements, as defined in ARIZ. REV. STAT. § 9-500.05, as amended.
  - 5. Contracts for the purchase or sale of real property and ancillary services related thereto, such as title insurance, appraisals or environmental assessments to the extent that they are negotiated in connection with a Contract for purchase or sale of real property.

(13-04, Amended, 11/21/2013)

**Section 3-3-4 Definitions - PART I General Provisions**

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- A. “Best Interests of the Town” means advantageous to the Town.
- B. “Bid” means a price-based Proposal that is submitted in response to an Invitation for Bids.
- C. “Bid or Proposal Guarantee” means a form of security that indemnifies the Town against a successful bidder’s failure to execute the Contract documents and proceed with performance.
- D. “Bid Opening” means the date and time set forth in the Solicitation for opening of sealed bids.
- E. “Business” means any Person authorized to do business in the State of Arizona.
- F. “Change Order” means a written order signed by an authorized agent of the Town that directs the Contractor to make changes that are authorized by the Town.
- G. “Closing Date” means the date and time set forth in a Solicitation for the receipt of Bids or Proposals by the Town, after which no Bid or Proposal shall be considered.
- H. “Confidential Information” means that portion of a Bid, Proposal, offer, Specification or protest that contains information that the Person submitting the information believes should be withheld, provided (i) such Person submits a written statement advising the Town of this belief at the time of the submission and (ii) the information is so identified wherever it appears.
- I. “Construction” means the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any public real property, but does not include the routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property or demolition projects costing less than \$200,000.00.
- J. “Contract” means all types of Town agreements, regardless of what they may be called, for the Procurement of Materials and Services, the demolition or Construction of public facilities, or the acquisition and disposal of real and personal property.
- K. “Contractor” means any Person having a Contract with the Town.
- L. “Cooperative Purchasing” means Procurement conducted by, or on behalf of, more than one public Procurement unit.
- M. “Data” means documented information, regardless of form or characteristic.
- N. “Days” shall mean calendar days unless otherwise specified.
- O. “Debarment” means disqualification by the Procurement Agent of a Vendor to receive the award of a Contract with the Town for a specified period of time, not to exceed three years, commensurate with the seriousness of the offense causing the disqualification, which may result from misconduct or failure or inadequacy of performance.

## Fountain Hills Town Code

- P. “Emergency” means a threat to the public health, welfare, property or safety.
- Q. “Employee” means an individual drawing a wage or a salary through the payroll process of the Town, whether elected or not.
- R. “Interested Party” means an actual or prospective bidder or Offeror whose economic interest may be affected substantially and directly by the issuance of a Solicitation, the award of a Contract, or by the failure to award a Contract. Whether an actual or prospective bidder or Offeror has an economic interest will depend upon the circumstances of each case.
- S. “Invitation for Bids” means all documents including those attached or incorporated by reference, utilized for soliciting bids in accordance with Section 3-3-20 below.
- T. “Materials” means all personal property, including equipment, supplies, printing, insurance and leases of personal property.
- U. “Offeror” or “Respondent” means any Person that responds to an Invitation for Bids, Request for Proposals, Solicitation, offer, or any other invitation or request by which the Town invites a Person to participate.
- V. “Open Market Purchase” means procedures used for Procurement of Materials and Services readily available to the general public on the open market which, by their nature, are subject to competition from multiple competing Vendors.
- W. “Payment Bond” means a form of security required to be provided by a Contractor for the protection of claimants supplying labor and/or Materials to the Contractor or its Subcontractors.
- X. “Performance Bond” means a form of security provided by a Contractor that secures the Contractor’s obligation to properly complete its work in accordance with the Contract.
- Y. “Person” means any individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, limited liability company or any other private legal entity, governmental entity, union, committee, club, other organization or group of individuals. It includes a trustee, receiver or similar representative.
- Z. “Price” means the total expenditure for a defined quantity of a Material or Service.
- AA. “Procurement” means the purchasing, renting, leasing or otherwise obtaining any Material or Service. The term includes all functions that pertain to the obtaining of any Material or Service, including description of requirements, selection and Solicitation of sources, preparation and award of Contract, and all phases of Contract administration.
- BB. “Procurement Agent” means the Town Manager or authorized designee.
- CC. “Procurement Policy” means the administrative policy created by the Town Manager to assist with the implementation of this Article.
- DD. “Professional Services” means those services requiring specialized knowledge, education, skill or expertise and where the qualifications of the Person(s) rendering the services are of primary importance. Professional Services shall include, but not be limited to, services provided by architects, attorneys, accountants, clergy, construction and project managers, dentists, design

## Fountain Hills Town Code

professionals, engineers, geologists, physicians, nurses, psychologists, teachers, veterinarians and health care providers, that provide a combination of professional and paraprofessional services or any other professions and services defined as Professional Services by state law.

- EE. “Proposal” means a written offer, solicited or unsolicited, for consideration as a basis for awarding or modifying a Contract.
- FF. “Request for Proposal” means all documents, including those attached or incorporated by reference, utilized for soliciting Proposals in accordance with Section 3-3-21 below.
- GG. “Request for Qualifications” means all documents, including those attached or incorporated by reference, utilized for soliciting qualifications-based Proposals in accordance with Section 3-3-23 below.
- HH. “Responsible Bidder” or “Responsible Offeror” means a bidder or Offeror who has (i) the capability to fully perform the Contract requirements and (ii) the reliability that will ensure good faith performance.
- II. “Responsive Bidder” or “Responsive Offeror” means a bidder or Offeror who has submitted a bid or Proposal that conforms in all material aspects to the Solicitation.
- JJ. “Service” means the furnishing of labor, time or effort by a Contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance. This term does not include “Professional Services” provided by those persons as defined in this Section.
- KK. “Solicitation” means an Invitation for Bids, a Request for Proposals, a Request for Qualifications or any other invitation or request by which the Town invites a Person to participate in a Procurement.
- LL. “Specification” means any description of the physical characteristics, functional characteristics, or the nature of a Material or Service item. The term may include a description of any requirements for inspecting, testing, or preparing a Material or Service item for delivery.
- MM. “Subcontractor” means a Person that contracts to perform work or render Services to a Contractor or to another Subcontractor as a part of a Contract with the Town.
- NN. “Suspension” means an action taken by the Procurement Agent disqualifying a Person or entity from participation in Town Procurement.
- OO. “Town” means the Town of Fountain Hills, an Arizona municipal corporation.
- PP. “Vendor” means any Person operating a Business that has, or proposes to, provide a Material or Service to the Town.

(13-04, Amended, 11/21/2013)

### **Section 3-3-5 Budgeting - PART I General Provisions**

- A. Procurements shall be contracted for or made only where sufficient funds have been budgeted in the year in which funds have been appropriated.

- B. Budgeted line items specifically identifying one-time operational or recurring Materials or Services that have been approved by the Council in the review and adoption of the annual Town budget, and for which an award is within the allocated expenditure set forth in the budget, may be approved by the Procurement Agent without further Council approval. Awards that exceed the allocated expenditure or deviate from the identified description and/or scope shall require Council approval.

(13-04, Amended, 11/21/2013; 98-27, Amended, 09/03/1998)

### **Section 3-3-6 Procurement Agent - PART I General Provisions**

The Procurement Agent shall (i) serve as the Contract administrator for the Town and as such shall supervise the execution and completion of all Contracts entered into by or on behalf of the Town and (ii) have general supervision, responsibility and authority to:

- A. Procure, contract for and execute agreements in any amount less than \$30,000.00 for Materials and Services, including rentals, Service agreements, and leases needed by any Town department, in accordance with this Article.
- B. Approve and sign Change Orders to Contracts authorized by the Council in an amount equal to the lesser of 10% of the Contract amount or \$30,000.00.
- C. Establish and amend all policies, regulations, forms, procedures and rules necessary and proper to implement the provisions of this Article.
- D. Have the authority to suspend or debar Vendors.
- E. Centralize Procurement, consistent with this Article, by which Materials and Services for all Town departments are purchased.
- F. Inform Town Employees and contractors of the ethical standards for public contracting.
- G. Designate another representative of the Town to have the authority to perform any or all of the above tasks.

(13-04, Amended, 11/21/2013)

### **Section 3-3-7 Procurement by Dollar Value; Execution - PART I General Provisions**

- A. Any purchase not exceeding \$30,000.00 may be made by the Procurement Agent in accordance with this Article and the Procurement Policy adopted pursuant to this Article. Contract requirements shall not be artificially divided so as to create multiple purchases of lesser amounts. Except as set forth in Subsections 3-3-5(B) and 3-3-6(B) above, any purchase exceeding \$30,000.00 shall be authorized by the Council. When it is advantageous to the Town, annual Contracts should be initiated for Services and Materials regularly purchased.
- B. The Procurement Agent may sign Contracts (1) for purchases not exceeding \$30,000.00 without Council approval and (2) in any amount after such Contract has been approved by the Council either as part of the annual budget or as a separate item. The Mayor may sign any Contracts of any amount as long as such Contracts have been approved by the Council.

(13-04, Amended, 11/21/2013; 98-27, Amended, 09/03/1998; 96-44, Amended, 11/07/1996)

**Section 3-3-8 On-line Bidding - PART I General Provisions**

- A. If the Procurement Agent determines that electronic, on-line bidding is in the Best Interests of the Town and the competitive Procurement process is facilitated thereby, the Procurement Agent may use on-line bidding to obtain bids electronically for the purchase of Materials and Services.
- B. An on-line bidding Solicitation must designate an opening date and time.
- C. The Closing Date and time for an on-line Solicitation may be fixed or remain open depending on the structure of the item being bid on-line. Information regarding the Closing Date and time must be included in the Solicitation. At the opening date and time, the Procurement Agent must begin accepting on-line bids and must continue accepting bids until the bid is officially closed.
- D. All on-line bids must be posted electronically and updated on a real-time basis.
- E. The Procurement Agent may:
  - 1. Require bidders to register before the opening date and time and, as part of that registration, require bidders to agree to any terms, conditions or other requirements of the Solicitation.
  - 2. Prequalify bidders and allow only those bidders who are prequalified to submit bids on-line.
- F. All bids submitted electronically through an on-line bidding process are public information and are subject to the same public disclosure laws and timelines that govern bids received through the sealed bid process.
- G. All remedies available to the Town and to bidders through the sealed bid process under this Article are also available to the Town and to bidders in an on-line bidding process.

(13-04, Amended, 11/21/2013)

**Section 3-3-9 Purchase Orders - PART I General Provisions**

The Procurement Agent shall provide forms of purchase orders that shall be used for the purchase of all Materials and Services for or on behalf of the Town. Open purchase orders may be utilized for the routine purchase of regularly-supplied items, provided that an open purchase order shall be limited to a single source and shall not be valid for more than \$10,000 in the aggregate.

(13-04, Amended, 11/21/2013)

**Section 3-3-10 Reserved - PART I General Provisions**

**Section 3-3-11 Ethical Standards - PART II Ethics; Violations; Unauthorized Purchases**

It is the policy of the Town for Employees to maintain high standards of honesty, integrity, impartiality, courtesy and conduct. These standards apply to Town Employees internally as well as when interacting with citizens and Vendors. Such policy is implemented by prescribing essential standards of ethical

## Fountain Hills Town Code

conduct without creating unnecessary obstacles to providing the Town with Materials or Services. To further this policy, the Town has promulgated ethical standards as set forth below. The Procurement Agent is authorized to take steps to ensure compliance with the following standards:

- A. It is an affirmative obligation for Town Employees to perform their responsibilities in such a manner to ensure fair competitive access to governmental Procurement by responsible Vendors.
- B. No Employee of the Town shall engage in acts that, in the reasonable judgment of the Procurement Agent, would result in a loss of confidence in the integrity of the Town's Procurement operation. Such acts include, but are not limited to (1) receipt of gifts or services of more than a nominal value from a prospective Vendor, (2) statements to a Vendor that it will be awarded the Contract based on personal knowledge or relationships with Town Employees without an evaluation of its submittal, (3) failure of a Town Employee sitting on a review committee to disclose any prior or current business or financial relationship with a proposed Vendor, (4) criticism of one Vendor to another Vendor who is competing for the same Procurement prior to bid or Proposal award or (5) any acts similar to those outlined in clauses (1) through (4) of this Subsection. For purposes of this Article, "nominal value" is defined as \$25.00 or less from any single party during any single calendar year.
- C. Town Employees responsible for participation in Procurement by virtue of their positions shall take reasonable efforts to ensure that Contractors doing business with the Town are expected to observe these same ethical standards. Violation of these standards shall constitute grounds for termination of a Contract with the Town and Debarment of the Contractor from doing any further business with the Town.

(13-04, Amended, 11/21/2013)

### **Section 3-3-12 Part II - Ethical Violations - PART II Ethics; Violations; Unauthorized Purchases**

- A. In addition to any applicable state laws, it is a violation of this Article:
  - 1. For any Person to attempt to or influence any Town Employee to violate the provisions of ethical conduct set forth in this Article.
  - 2. For any Person preparing Specifications or plans pursuant to this Article or any policy or procedure of the Town to receive any direct pecuniary benefit from the utilization of such plans or Specifications, other than compensation owed for preparation of the Specifications or plans.
  - 3. For any Employee or agent acting on behalf of the Town to directly or indirectly participate in or benefit or receive any pecuniary benefit from a Procurement in violation of state or federal law.
  - 4. For any Person to offer, give or agree to give any Employee or former Employee of the Town or for any Employee or former Employee of the Town to solicit, demand, accept, or agree to accept from another Person, any valuable thing or valuable benefit that would not accrue in the performance of his official duties or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing content of any Specification or Procurement standard, rendering of advice, investigation, auditing or in any advisory capacity in any proceeding or application request for ruling, determination,



claim or controversy, or other particular matter, pertaining to any program requirement of a Contract or subcontract, or to any Solicitation or Proposal therefore. No action taken for violations of this Subsection shall be construed to preclude criminal prosecution of an Employee or former Employee or any other Person under the provisions of state or federal law.

5. For any payment, gratuity or offer of employment to be made by or on behalf of a Subcontractor under a Contract to the prime Contractor or higher tier Subcontractor or any Person associated therewith, as an inducement for the award of a subcontract or order. Violation of this standard shall constitute grounds for termination of a Contract with the Town and Debarment of the Vendor from doing any further business with the Town. This information shall be included as a term and condition of all Town Contracts.
  6. For a Person to be retained, or to retain a Person, to solicit or secure a Town Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide established sales and brokerage agencies for the purpose of securing business.
  7. For any Employee who is participating directly or indirectly in a Procurement process to become the Employee of any Person under Contract with the Town concerning any matters that the Employee participated in during the same Procurement process for a period of twelve months following his employment with the Town.
  8. For any Employee or former Employee of the Town to disclose or use Confidential Information acquired by the Employee in the performance of his official duties for the actual or anticipated pecuniary benefit of any Person.
- B. It is no defense to a violation of this Section that the Employee to whom a benefit or offer of employment was made, or agree to be made, was not qualified to act in the desired manner.
- C. An Employee or Person may violate this Section by intentionally or knowingly engaging in a violation or by recklessly or negligently engaging in a violation. The Person's state of mind shall only be considered in imposing the penalty for such violation.

(13-04, Amended, 11/21/2013; 98-27, Amended, 09/03/1998)

### **Section 3-3-13 Unauthorized Purchases, Violation, Liability, Enforcement - PART II Ethics; Violations; Unauthorized Purchases**

- A. Except as provided in this Article, it shall be improper for any Town Employee to order the purchase of Materials or Services or to attempt to enter into Contracts within the purview of this Article other than through the Procurement Agent. Purchase Orders or Contracts made contrary to the provisions hereof shall not be approved by the Procurement Agent and the Town shall not be bound thereby. Further, the Procurement Agent may impose discipline on Employees who violate this Article in accordance with the Town's codes and personnel administrative regulations.
- B. A Person who knowingly contracts for or purchases any Materials, Services or Construction in a manner contrary to the requirements of this Article violates the ethical standards contained in this Article shall be personally liable for the recovery of all public monies paid, together with legal interest and all costs, attorney's fees and damages arising out of the violation. Further, the

## Fountain Hills Town Code

Procurement Agent may impose discipline on Employees who (1) contracted for or purchased any Materials, Services of Construction in a manner contrary to the requirements of this Article or (2) engaged in violations of the provisions set forth in Sections 3-3-11 and 3-3-12 above in accordance with the Town's codes and personnel administrative regulations.

- C. The Town Attorney shall assist the Procurement Agent or authorized designee in enforcing the provisions of this Article.

(13-04, Amended, 11/21/2013)

### **Section 3-3-14 Reserved - PART II Ethics; Violations; Unauthorized Purchases**

(13-04, Deleted, 11/21/2013; 96-44, Added, 11/07/1996)

### **Section 3-3-15 Reserved - PART II Ethics; Violations; Unauthorized Purchases**

(13-04, Added, 11/21/2013)

### **Section 3-3-16 Applicability - PART III Formal Bidding Procedures**

The formal bidding process set forth in this Part shall be utilized for all purchases not designated as eligible for purchases under petty cash, Open Market Purchase or small purchase in the Procurement Policy; provided, however, that the formal bidding process set forth in this Part may be supplemented by the Procurement Policy. Informal purchases (petty cash, Open Market Purchase and small purchases) shall be governed by the Procurement Policy.

(13-04, Added, 11/21/2013)

### **Section 3-3-17 Public Notice - PART III Formal Bidding Procedures**

- A. Public notice of Invitations for Bids, Requests for Proposals or Requests for Qualifications shall be in a manner that is reasonable in the judgment of Procurement Agent given the commercial context of the Solicitation. The advertisement shall specifically state the character of the Town purchase contemplated. Notice may be given in any publication that is reasonably available to prospective bidders in the judgment of Procurement Agent. For purposes of this Article, reasonable notice shall be defined as (1) not less than five business days for an Invitation for Bids and (2) not less than 21 calendar Days for a Request for Proposals or a Request for Qualifications.
- B. Public notice shall also be provided in a manner that is reasonable in the judgment of the Procurement Agent in publications of limited circulation, with the intent to encourage participation of as many qualified Businesses as reasonably possible, including disadvantaged business enterprise firms.

(13-04, Added, 11/21/2013)

**Section 3-3-18 Bid or Proposal Guarantee - PART III Formal Bidding Procedures**

The Procurement Agent may require a Bid or Proposal Guarantee be submitted with any and all Bids or Proposals, and Performance Bonds and Payment Bonds be submitted prior to execution of any Contract. The Procurement Agent may waive the Bid or Proposal Guarantee requirement if he finds that the requirement will have a significant negative impact on the ability of disadvantaged business enterprises to compete for Town purchases or if he determines, in his reasonable discretion, that such waiver is in the Best Interests of the Town.

(13-04, Added, 11/21/2013)

**Section 3-3-19 Confidential Information - PART III Formal Bidding Procedures**

- A. If a Person believes that a Bid, Proposal, Offer, or Specification contains information that should be withheld from public disclosure, a statement advising the Procurement Agent of this belief and the basis for exemption from such disclosure shall accompany this submission and the information shall be specifically identified wherever it appears.
- B. The Procurement Agent shall make a determination whether the information shall be subject to public disclosure and shall advise in writing the party submitting the information of the final determination.
- C. All information contained in the Proposals shall be deemed as temporarily exempt from public disclosure based on the Town's need to avoid disclosure of contents prejudicial to competing Offerors during the process of negotiation. The Proposals shall not be open for public inspection until after Contract award. Except to the extent the Offeror designates, and the Town concurs, trade secrets or other proprietary Data contained in the Proposal shall remain exempt from public disclosure only to the extent permitted by law.

(13-04, Amended, 11/21/2013)

**Section 3-3-20 Invitation for Bids - PART III Formal Bidding Procedures**

- A. All Contracts of the Town shall be awarded by competitive sealed bidding except as otherwise provided in this Article or the Procurement Policy.
- B. An Invitation for Bids shall be issued and shall include Specifications and all contractual terms and conditions applicable to the Procurement.
- C. Bids shall be by sealed Proposals only and under such regulations as may be prescribed by the Procurement Agent. The Procurement Agent shall have the power to reject any or all bids, and to advertise for bids again.
- D. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each Bid, and such other relevant information as the Procurement Agent deems appropriate, together with the name of each bidder, shall be recorded; the record of Bids shall be open to public inspection immediately, but individual Bids shall be open to public inspection only after the Contract is awarded.
- E. Bids shall be unconditionally accepted without alteration or correction, except as authorized by

this Article. Bids shall be evaluated based upon the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the Bid Price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in Bid evaluation that is not set forth in the Invitation for Bids, this Article or the Procurement Policy.

- F. Correction or withdrawal of inadvertently erroneous bids before or after Bid Opening, or cancellation of awards or Contracts based on such bid mistakes, may be permitted where appropriate at the Town's sole discretion. After Bid Opening, no changes in Bid Prices or other provisions of bids prejudicial to the interest of the Town or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid in the sole discretion of the Town and only if one of the following occurs:
  - 1. The mistake is clearly evident on the face of the bid document but the intended correction bid is not similarly evident.
  - 2. The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel award or Contracts based on bid mistakes, shall be supported by a written determination made by the Procurement Agent.
- G. The Contract shall be awarded to the Offeror that is determined to be a Responsive Bidder and a Responsible Bidder and whose bid (1) is the lowest cost and (2) meets the requirements and criteria set forth in the Invitation for Bids. The amount of applicable transaction privilege or use tax of the Town shall be included in the bid prices and shall not be a factor in determining the net lowest bid. In the event the lowest responsive and responsible Bid for a Construction project exceeds available funds as certified by the Procurement Agent, and such bid does not exceed such funds by more than five percent, the Procurement Agent is authorized, when time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the Bid Price with the low Responsive Bidder and Responsible Bidder in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the Invitation for Bids.
- H. When it is considered impractical to initially prepare a purchase description to support an award based on Price, an Invitation for Bids may be issued requesting the submission of unpriced offers to be followed by an Invitation for Bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first Solicitation.
- I. All Vendors and contractors must be in compliance, at the time set for opening the bid, with all applicable (1) state, federal and county laws, rules and regulations and (2) Town codes, ordinances and regulations.

(13-04, Added, 11/21/2013)

### **Section 3-3-21 Request for Proposals - PART III Formal Bidding Procedures**

- A. When the Procurement Agent determines that the use of competitive sealed bidding is either not practicable or not advantageous to the Town, a Contract may be entered into by use of the competitive sealed Proposals or other approved methods that are defined as a Request for

## Fountain Hills Town Code

### Proposals.

- B. Proposals shall be solicited through a written Request for Proposals.
- C. Proposals shall be submitted at the time and place designated in the Request for Proposals.
- D. As provided in the Request for Proposals, discussions may be conducted with Responsible Offerors who submit Proposals determined to be reasonably susceptible to being selected for award for the purpose of clarification to ensure full understanding of, and responsiveness to, the Solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and revision of Proposals and such revisions may be permitted after submissions and before the award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from Proposals submitted by competing proposers.
- E. The award shall be made to the Offeror that is determined to be a Responsible Offeror and a Responsive Offeror whose Proposal is determined, in writing, to be the most advantageous to the Town and best meets the overall needs of the Town taking into consideration only the evaluation factors set forth in the Request for Proposals. The Request for Proposals shall state the relative importance of Price and other evaluation factors; specific numerical weighing is not required. The amount of applicable transaction privilege or use tax of the Town shall be included in the bid prices and shall not be a factor in determining the net lowest bid.
- F. The Contract file shall contain the basis upon which the award is made.
- G. All Vendors and Contractors must be in compliance, at the time set for opening the Proposal, with all applicable (1) state, federal and county laws, rules and regulations and (2) Town codes, ordinances and regulations.

(13-04, Added, 11/21/2013)

### **Section 3-3-22 Withdrawal or Cancellation of Bids or Proposals - PART III Formal Bidding Procedures**

- A. Prior to opening of the bids or Proposals, the Invitation for Bids or the Request for Proposals may be delayed or canceled, or any or all bids or Proposals may be rejected, in whole or in part, by the Procurement Agent, when determined to be in the Best Interests of the Town.
- B. After opening of the bids or Proposals, the Procurement Agent may reject all bids or Proposals.
- C. A bidder or proposer may withdraw its bid at any time prior to Bid Opening or the deadline for receipt of the bid or Proposal by delivering written notice to the Procurement Agent.

(13-04, Added, 11/21/2013)

### **Section 3-3-23 Retention of Professional Services; Requests for Qualifications - PART III Formal Bidding Procedures**

- A. Technical Registrants. The Town shall procure Professional Services from technical registrants in the manner prescribed in ARIZ. REV. STAT., Title 34, Chapter 6, as amended. For purposes

of this Article, the term “technical registrant” means a Person who provides any of the Professional Services listed in ARIZ. REV. STAT., Title 32, Chapter 1, as amended, and includes, but is not limited to, architects, assayers, engineers, geologists, land surveyors and landscape architects.

- B. Professional Legal Services. Legal counsel services may be procured by direct selection, Request for Proposals or Requests for Qualifications processes. If defense counsel is not assigned by the Town’s risk carrier, the Town Attorney shall recommend to the Council such persons or firms to provide direct defense of any claim made against the Town. Such legal counsel services shall be procured by direct selection.
- C. Other Professional Services. The Town may procure Professional Services by soliciting statements of qualifications for providing such services. The Town may procure such Professional Services by direct selection pursuant to the administrative regulations promulgated by the Procurement Agent, subject to the limitations in ARIV. REV. STAT., Title 34, as amended. Contracts for Professional Services not exceeding \$30,000.00 shall be approved by the Procurement Agent. Contracts for Professional Services exceeding \$30,000.00 shall be approved by the Council. If determined by the Procurement Agent to be inappropriate for direct selection, Professional Services shall be procured through the use of statements of qualifications as follows:
  - 1. The Procurement Agent shall give adequate notice of the need for such services through a Request for Qualifications. The request shall describe the services required, list the types of information and Data required of each Offeror and state the relative importance of particular qualifications.
  - 2. Persons engaged in providing the designated types of Professional Services may submit statements of qualifications in providing such Professional Services.
  - 3. The Procurement Agent may appoint a committee to review qualifications. If appointed, the committee shall consist of the Procurement Agent and one or more professionals licensed, registered or admitted to the profession that is the subject of the Procurement. Discussions with Offerors who submit Proposals may be conducted to determine qualifications for further consideration. Award shall be made to the Offeror determined, in writing, to be the best qualified. Compensation shall be negotiated after an award is made.
  - 4. The Procurement Agent shall conduct negotiations with the Offeror determined to be the most qualified to establish fair and reasonable compensation. If compensation cannot be agreed upon with the best qualified Offeror, then negotiations will be formally terminated with the selected Offeror. If Proposals were submitted by one or more other Offerors determined to be qualified, negotiations may be conducted with such other Offeror or Offerors, in the order of their respective qualification ranking, and the Contract may be awarded to the Offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.
  - 5. The Contract award shall be made to the Offeror determined in writing by the Procurement Agent or authorized designee to be best qualified based upon (a) the evaluation factors set forth in the Request for Qualifications and (b) agreement between the Town and the Offeror as to fair and reasonable compensation.

(13-04, Added, 11/21/2013)

**Section 3-3-24 Construction Contracts - PART III Formal Bidding Procedures**

All Construction Contracts for public improvement projects shall be awarded in accordance with ARIZ. REV. STAT., Title 34, as amended. If public competitive bidding is not required pursuant to ARIZ. REV. STAT. § 34-201(C) or (D), as amended, then the requirements of this Article shall apply. In the event of a conflict between this Chapter and ARIZ. REV. STAT., Title 34, as amended, the provisions of Title 34 shall govern.

(13-04, Added, 11/21/2013)

**Section 3-3-25 Emergency Procurements - PART III Formal Bidding Procedures**

- A. Notwithstanding any other provisions of this Article, upon declaration of an Emergency in the manner provided by law, the Procurement Agent may make or authorize Emergency Procurements based upon a threat to the public health, welfare, property or safety. Such Emergency Procurements shall be made with such competition as is practicable under the circumstances. The written determination for the Emergency and the selection of the Contractor shall be included in the Contract file.
- B. The Town department seeking an Emergency Procurement shall prepare a written requisition documenting the existence of an Emergency condition and explaining the Procurement need. The requisition shall be signed by the department director.
- C. An Emergency Procurement shall be limited to those Materials, Services or Construction reasonably necessary to satisfy the Emergency need.
- D. All Emergency Procurements shall be approved by the Procurement Agent, unless submitted with a copy of the resolution adopted by the Council declaring an Emergency and authorizing the Emergency Procurements.
- E. The Procurement Agent has the authority to enter into Emergency Procurement Contracts that are not more than \$30,000.00 and based upon the Best Interests of the Town, taking into account factors such as need, availability and other relevant Town requirements. The Council shall have the authority to authorize the Mayor or Procurement Agent to execute Emergency Procurement Contracts in excess of \$30,000.00. Such Emergency Procurement shall be exempt from the competitive requirements of this Article.

(13-04, Added, 11/21/2013)

**Section 3-3-26 Sole Source Procurement - PART III Formal Bidding Procedures**

A Procurement may be made or Contract awarded by the Procurement Agent without competition when the requesting department director determines in writing, after conducting a good faith review of available sources, that there is only one reasonable and practicable source for the required Materials or Service. The requesting department shall provide written evidence to support a sole source determination, which shall be approved or denied by the Procurement Agent in his sole discretion. The Procurement Agent will participate with the requesting department in conducting negotiations, as appropriate, relating to Price, delivery and terms. Sole source Procurement shall be avoided, except when no reasonable alternative sources exist. A record of sole source procurements shall be maintained as a public record.

(13-04, Added, 11/21/2013)

**Section 3-3-27 Cooperative Purchasing - PART III Formal Bidding Procedures**

- A. The Procurement Agent shall have the authority to (1) participate with a state, other political subdivisions of a state and the federal government for the Procurement of Materials or Services with Cooperative Purchasing agreements including through on-line Procurement processes such as “Buy Hub” and (2) directly enter into agreements with Vendors who have been awarded Contracts with other governmental entities for Materials and Services, provided the Procurement methods of the other party comply with the intent of this Article.
- B. If a Procurement under this Section involves the expenditure of state or federal assistance or Contract monies, the Procurement Agent shall comply with state or federal law and regulations which are mandatory and which are not reflected in this Article or guidelines adopted by the Town. It shall be the responsibility of the requesting department to provide the Procurement Agent with the applicable acquisition requirements concurrent with its requisition.

(13-04, Added, 11/21/2013)

**Section 3-3-28 Protests; Informal and Formal - PART III Formal Bidding Procedures**

- A. Any Interested Party to a Contract may protest (1) a Solicitation issued by the Town, (2) a proposed award of a Town Contract, (3) the rejection of a request for changes, including a Change Order or (4) Debarment from the Procurement process of the Town, by filing an informal protest.
- B. Protests shall be filed with the Procurement Agent within five Days from the time the alleged instance occurred. The Procurement Agent will make the initial contact in an attempt to resolve the matter.
- C. The Procurement Agent shall render a decision in writing within 15 Days from the date the informal protest is filed. Copies of the decision shall be furnished to all interested parties by first class mail at the last address on file with the Town. If the Procurement Agent fails to render a decision within the required period, the informal protest shall be deemed denied and a formal protest may be filed.
- D. After conclusion of the informal protest process, any Interested Party to a Contract may file a formal appeal protesting (1) a Solicitation issued by the Town, (2) a proposed award of a Town Contract, (3) the rejection of a request for changes, including a Change Order, (4) Debarment from the Procurement process of the Town or (5) denial of an informal protest, by filing a formal protest in the manner provided by this Section.
- E. A formal protest shall be in writing signed by an authorized party, containing their name, address and telephone number, identification of the Contract, a detailed statement of the legal and factual grounds of the protest, including copies of all relevant documents and the specific relief requested.
- F. The formal protest shall be filed within five business days following (1) the decision of the Procurement Agent on an informal protest or (2) the end of the 15-Day informal protest process, if no decision was issued.
- G. The formal protest shall be heard by a hearing officer appointed by the Procurement Agent for



such purposes within ten business days after filing of the formal protest, unless extended by the hearing officer.

- H. The hearing officer (i) may (a) reject the protest in whole or in part or (b) sustain the protest in whole or in part and (ii) shall provide for an appropriate remedy as follows:
1. In determining an appropriate remedy, the hearing officer shall consider the circumstances surrounding the Procurement or proposed Procurement including, but not limited to the seriousness of the Procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the Procurement system, the good faith of the parties, the extent of performance, costs to the Town, the urgency of the Procurement and the impact of the relief upon the Town.
  2. An appropriate remedy may include one or more of the following:
    - a. Decline to exercise an option to renew under the Contract.
    - b. Direct the Town to terminate the Contract award.
    - c. Direct the Town to reissue the Solicitation.
    - d. Direct the Town to issue a new Solicitation.
    - e. Direct the Town to award a Contract consistent with Town codes and policies.
    - f. Such other relief as is determined necessary to ensure compliance with this Article.

(13-04, Added, 11/21/2013)

### **Section 3-3-29 Debarments and Suspensions - PART III Formal Bidding Procedures**

The Procurement Agent has the sole authority to debar or suspend a Vendor from participating in a Town Procurement. The Vendor may be suspended or debarred based upon the following factors:

- A. The Vendor does not have sufficient financial ability, equipment or personnel to perform the Contract.
- B. The Vendor has repeatedly breached contractual obligations to public or private agencies.
- C. The Vendor fails to comply with the requests of a background investigation.

(13-04, Added, 11/21/2013)

### **Section 3-3-30 Acceptance of Work Completed - PART III Formal Bidding Procedures**

- A. Notice of Acceptance. When a contracting party providing Materials or Services to the Town makes a request for acceptance by the Town of work as completed, the Procurement Agent shall indicate acceptance on behalf of the Town on a certificate of final completion or other form designated for that purpose. Until the notice of acceptance is issued, no public work completed

## Fountain Hills Town Code

on behalf of the Town shall be considered as the property of the Town, and the Town shall assume no responsibility therefore.

- B. Release of Retainage; Conditions. The Town shall not release any funds due but which are held as retainage until the Contract administrator is satisfied that the work has been completed in accordance with the Specifications of the Contract.

(13-04, Added, 11/21/2013)

### **Section 3-3-31 Attestation of Contracts by the Town Clerk - PART III Formal Bidding Procedures**

All Contracts entered into by the Town shall be attested to by the Town Clerk and shall not be binding on the Town until so attested. The Town Clerk shall retain the original of all Contracts and agreements according to the retention schedule adopted by the Council and shall provide to the Procurement Agent such documents as are necessary for orderly administration of the Town's business.

(13-04, Added, 11/21/2013)

## **Article 3-4**

### **DISPOSITION OF PROPERTY**

#### **Sections:**

- 3-4-1 In General**
- 3-4-2 Definitions**
- 3-4-3 Property Administrator**
- 3-4-4 Sale, Lease or Disposal of Surplus or Obsolete Town or Personal Property**
- 3-4-5 Unclaimed Personal Property**
- 3-4-6 Disposition of Real Property**

#### **Section 3-4-1 In General**

No property belonging to the Town shall be disposed of except in accordance with this Code and such rules as the Council may adopt pursuant to this Code.

(13-04, Amended, 11/21/2013)

#### **Section 3-4-2 Definitions**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- A. “Disposition” means the sale, lease or other means of divestiture of title or the right to possession of any property belonging to the Town.
- B. “Personal Property” means property which is tangible and movable without damage, but may include fixtures attached to Real Property.
- C. “Property Administrator” means the Town Manager or designee assigned as custodian of all property belonging to the Town.
- D. “Real Property” means property consisting of land or structures affixed to land.

(13-04, Amended, 11/21/2013)

#### **Section 3-4-3 Property Administrator**

The Town Manager shall serve as the Property Administrator for the Town and shall have custody of all property, real or personal, belonging to the Town. The Town Manager may designate some other employee of the Town as Property Administrator, and such designee shall report to the Town Manager. The Property Administrator shall maintain a complete and current inventory of the property of the Town, which inventory shall be available for public review.

(13-04, Amended, 11/21/2013)

#### **Section 3-4-4 Sale, Lease or Disposal of Surplus or Obsolete Town or Personal Property**

The Town shall have the right to sell, lease, exchange, donate or otherwise dispose of Town property in the Best Interests of the Town. The disposal of surplus or obsolete property shall be done in as competitive a manner as the Town Manager or authorized designee determines to be practicable.

(13-04, Amended, 11/21/2013)

#### **Section 3-4-5 Unclaimed Personal Property**

- A. Personal Property shall be deemed abandoned if the owner thereof fails to make satisfactory claim and proof of ownership within 30 days after the giving of notice as provided below.
- B. The Town Manager or authorized designee having in his possession Personal Property shall from time to time prepare a notice in writing containing the following information:
  - 1. Contact information for the Town Employee responsible for the property.
  - 2. A description of the Personal Property that has come into the possession of the Town since giving of the last periodic notice.
  - 3. A demand that all owners of the property described in the notice make claim and proof of ownership satisfactory to the Town Manager or authorized designee within 30 days from the date of the notice.
  - 4. A statement that any of the described Personal Property not claimed within such 30-Day period shall be deemed to be abandoned, and that the same may be sold at public auction or otherwise disposed of in accordance with this Article.
  - 5. The notice shall be published in a newspaper of general circulation in the Town at least once each week for two consecutive weeks and copies thereof shall be posted in three public places within the corporate limits of the Town, including the Town's website, and a copy of such notice shall be mailed to the owner, if known, at his/her last known mailing address.
- C. Claim and proof of ownership.
  - 1. Except as provided in this Article, if the Personal Property described in the notice in Subsection 3-4-5(B) above remains in the possession of the Town Manager or authorized designee without any person making satisfactory claim and proof of ownership therefor for a period of 30 days from the date of the notice provided as set forth in Subsection 3-4-5(B), the Personal Property shall be deemed to be abandoned, and title thereof shall be deemed to be in the Town by reason of abandonment by the owner and possession by the Town.
  - 2. When dealing with property that is lost, found by a person not the owner (hereinafter referred to as the "finder") and then turned over to the Town, the finder shall be deemed to have made satisfactory claim and proof of ownership to be entitled to possession of the Personal Property at the end of 30 Days from the date of the notice in Subsection 3-4-5(B). However, the finder's claim and proof of ownership under this Subsection

## Fountain Hills Town Code

shall be inferior to and subject to a satisfactory claim and proof of ownership by any owner of the Personal Property.

3. Upon delivery of the property to the finder as provided in this Section, the Town shall have no further interest in, or obligations with respect to, the property. The Town shall, however, provide the name and address of the finder and the location of the property, if known, to any person making a satisfactory claim and proof of ownership subsequent to the delivery of the property to the finder.
- D. Any abandoned Personal Property may, at the election of the Town, be (i) donated to a non-profit charitable entity or other governmental entity or (ii) sold at public auction (which may include an on-line auction) to the highest bidder after ten days' notice given in the same manner as provided in Subsection 3-4-5(B) above, which notice shall contain the following information:
1. Contact information for the Town Employee responsible for the property.
  2. A description of the property to be sold.
  3. The date, time, place of the sale and the person to conduct the same.
  4. A statement that the described Personal Property is deemed to be abandoned and that the same will be sold at public sale to the highest cash bidder.
- E. The sale provided for herein shall be at public auction (which may include an on-line auction) to the highest bidder for cash, but in no event shall any item be sold for less than the cost of advertising and selling. The Town reserves the right to reject any and all bids.
- F. The Town Manager or authorized designee conducting the sale shall maintain a complete and accurate record of the sale which shall include the description of the Personal Property sold, the name and address of the purchasers, the sale price of each item sold and the costs of the sale.
- G. The Town Manager or authorized designee conducting the sale shall execute and deliver or cause to be delivered a certificate of sale to the purchaser of each item of Personal Property, which certificate shall describe the item in the same manner as the notice of sale and shall recite the purchase price paid, the name and address of the purchaser and the date of the purchase. Such certificate shall pass the title to the item to the purchaser.
- H. All moneys received from sales of Personal Property as provided for in this Article shall be immediately paid over to the Town finance division and retained in a separate account for at least six months. Upon the expiration of such time, unless sooner claimed as herein provided, such moneys shall be paid into the general fund of the Town.
- I. Should any person within six months from the date of the public sale of any item of Personal Property make a valid claim thereto and establish ownership, the sum of money for which the item sold shall be paid over to such person, less the costs of advertising and selling. In no event shall any claim be considered unless it shall be presented to the Town Manager in writing under oath and before the expiration of six months from the date of the sale of the item claimed. Once such amounts are paid by the Town, the Town shall have no further obligation relating to the property.
- J. Items for which no bids are received may be deemed to be of no intrinsic or monetary value and

## Fountain Hills Town Code

may be disposed of in any manner deemed appropriate by the Town Manager.

- K. Items useful or necessary to the Town may be retained by the Town for its use.
- L. Each person performing any action provided for in this article shall make affidavit thereof which shall be prima facie evidence of the facts alleged in the affidavit.

(13-04, Amended, 11/21/2013)

### **Section 3-4-6 Disposition of Real Property**

- A. **Limitations.** No sale or other Disposition of Real Property belonging to the Town shall be final until approved by a majority vote of the Council and all documents pertaining thereto shall be executed by the Mayor or Town Manager and attested by the Town Clerk. If the value of the property exceeds the amount set forth in ARIZ. REV. STAT. § 9-403(A), as amended, the sale shall first be authorized at an election held pursuant to ARIZ. REV. STAT. § 9-403.
- B. **Advertisement; Bids.** No Real Property belonging to the Town shall be sold or otherwise disposed of except as provided in ARIZ. REV. STAT. § 9-402 *et seq.*, as amended. The Town shall have the right to reject any and all bids, to withdraw the property from sale prior to sale and to readvertise for sale.
- C. **Appraisal Prior to Sale.** Prior to the sale of any Real Property, the Town shall obtain one or more appraisals of value from one or more disinterested parties. Such appraisal(s) shall form the basis for valuation of the property to be sold.
- D. **Sale; Lease; Exchange.** The Town may exchange, sell or lease Real Property to the federal government or another political subdivision pursuant to the procedures specified in ARIZ. REV. STAT. § 9-405 and § 9-407, as amended.

(13-04, Added, 11/21/2013)

## Article 3-5

### CIVIL PREPAREDNESS AND DISASTER

#### Sections:

<b>3-5-1</b>	<b>Purposes</b>
<b>3-5-2</b>	<b>Definitions</b>
<b>3-5-3</b>	<b>Civil Preparedness Organization</b>
<b>3-5-4</b>	<b>Powers and Duties</b>
<b>3-5-5</b>	<b>Mutual Aid</b>
<b>3-5-6</b>	<b>Immunity of Town and Representatives Thereof</b>
<b>3-5-7</b>	<b>Violations</b>
<b>Section 3-5-1</b>	<b>Purposes</b>

The purposes of this Article are to:

- A. Reduce vulnerability of people and the community to damage, injury and loss of life and property resulting from natural or man-made catastrophes, riots or hostile military or paramilitary action.
- B. Prepare for prompt and efficient rescue, care and treatment of persons victimized or threatened by Disaster.
- C. Provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by Disasters.
- D. Clarify and strengthen the roles of the Mayor, Council, Town Manager and Town agencies in prevention of, preparation for and response to and recovery from Disasters.
- E. Authorize and provide for cooperation in Disaster prevention, preparedness, response and recovery.
- F. Authorize and provide for coordination of activities relating to Disaster prevention, preparedness, response and recovery by agencies and officers of this Town, agencies of the private sector and similar activities in which the federal government, the state and its political subdivisions may participate.
- G. Provide a Disaster management system embodying all aspects of pre-disaster preparedness and post-disaster response.

(13-04, Amended, 11/21/2013)

#### Section 3-5-2 Definitions

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- A. “Civil Preparedness” means the organization, administration, trained manpower, facilities, equipment, material, supplies, programs, Emergency plans, ability to execute Emergency plans

## Fountain Hills Town Code

and all other measures necessary and incidental thereto relating to Disaster prevention preparedness response and recovery by all governmental and private sector agencies to protect or save health, life or property.

- B. “Director” means the Town Manager or authorized designee.
- C. “Disaster” means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property or extreme peril to the safety of persons or property, resulting from any natural or manmade causes, including but not limited to fire, flood, earthquake, wind, storm, blight, drought, famine, infestation, air contamination, epidemic, explosion, riot or other acts of civil disobedience which endanger life or property, or hostile military or paramilitary action.
- D. “Emergency” means the existence of a Disaster within the Town limits requiring immediate action by the Emergency Forces of the Town.
- E. “Emergency Forces” means all Town governmental and private sector agencies, volunteers, facilities, equipment, trained manpower and other resources required to perform Civil Preparedness functions.
- F. “Local Emergency” means the existence of a Disaster within the Town limits, and the situation is or is likely to be beyond the capability and resources of the Town as determined by the Mayor and which requires the combined efforts of other political subdivisions.
- G. “Regulations” means the orders, rules and Emergency procedures deemed essential for Civil Preparedness.
- H. “State of Emergency” means the duly proclaimed existence of a Disaster within the state except a Disaster resulting in a State of War Emergency which is or is likely to be beyond the capabilities and resources of any single county, city or town and requires the combined efforts of the state and the political subdivision.
- I. “State of War Emergency” means the situation which exists immediately whenever this nation is attacked or upon receipt by this state of a warning from the federal government indicating that such an attack is imminent. “Local Emergency” means the existence of a Disaster within the Town limits, and the situation is or is likely to be beyond the capability and resources of the Town as determined by the Mayor and which requires the combined efforts of other political subdivisions.

(13-04, Amended, 11/21/2013; 98-27, Amended, 09/03/1998)

### **Section 3-5-3 Civil Preparedness Organization**

The Town Manager is hereby authorized and directed to create a Civil Preparedness organization and shall serve as the Director of the organization until he appoints a qualified professional to act in this capacity.

(13-04, Amended, 11/21/2013; 98-27, Amended, 09/03/1998; 98-27, Renumbered, 09/03/1998)



**Section 3-5-4 Powers and Duties**

**A. The Council:**

1. Shall have the power to make, amend and rescind Regulations, not inconsistent with Regulations promulgated by the Governor, necessary for Civil Preparedness, which Regulations shall have the full effect of this Article when a copy is filed in the office of the Town Clerk. Existing ordinances and regulations, or ordinances and regulations issued under authority of ARIZ. REV. STAT., Title 26, Chapter 2, in conflict therewith, are suspended during the time and to the extent that they are in conflict.
2. May appropriate and expend funds, make contracts, obtain and distribute equipment, materials and supplies for Civil Preparedness purposes.
3. In the absence of specific authority in state emergency plans and procedures, the Council shall take emergency measures as deemed necessary to carry out the provisions of ARIZ. REV. STAT., Title 26, Chapter 2.
4. In a State of War Emergency the Council may waive procedures and formalities required by law pertaining to the performance of public work, entering into contracts, incurring obligations, employing permanent and temporary workers, utilizing volunteer workers, renting equipment, purchasing and distributing supplies, materials and facilities and appropriating and expending public funds when the Council determines and declares that strict compliance with such procedures and formalities may prevent, hinder or delay mitigation of the effects of the State of War Emergency. The Town shall be exempt during such Emergency from budget limitations prescribed by Article IX, Section 20 of the State Constitution.

**B. The Mayor:**

1. In addition to the powers granted by other provisions of the law or Town ordinance, the Mayor may, by proclamation, declare an Emergency or a Local Emergency to exist. The proclamation may be rescinded by a majority of the Council after twenty-four hours.
2. During an Emergency or Local Emergency, the Mayor shall govern by proclamation and shall have the authority to impose all necessary Regulations to preserve the peace and order of the Town including, but not limited to:
  - a. Imposition of curfews in all or in a portion of the Town.
  - b. Ordering the closing of any business.
  - c. Denying public access to any public building, street or other public place.
  - d. Calling upon regular or auxiliary law enforcement agencies and organizations within or without the Town for assistance.

**C. The Director:**

1. The Director is responsible in non-emergency periods to act on behalf of the Mayor and

Council to develop a readiness plan for the Town's Civil Preparedness and for coordinated operations in Disaster situations.

2. During emergencies, the Director shall act as the principal advisor or aide to the Mayor on Emergency operations. His major responsibility is to assure coordination among Emergency Forces and with higher and adjacent governments, by assuring that the Emergency operation center functions effectively. He shall assist the Mayor in the execution of operations, plans and procedures required by the Emergency.
3. The Director shall prepare a comprehensive Disaster basic plan which shall be adopted and maintained by resolution of the Council upon the recommendations of the Director. In the preparation of this plan as it pertains to Town organization, it is the intent that the services, equipment, facilities and personnel of all existing departments and agencies be used to the fullest extent.
4. The Disaster plan shall be considered supplementary to this Article and have the effect of law whenever emergencies, as defined in this Article, have been proclaimed.

(13-04, Amended, 11/21/2013; 98-27, Renumbered, 09/03/1998)

### **Section 3-5-5 Mutual Aid**

In periods of Local Emergency, as declared pursuant to this Article, the Town is hereby granted full power to provide mutual aid to any affected area in accordance with local ordinances, resolutions, emergency plans or agreements therefore. The Town may request from state agencies mutual aid including personnel, equipment and other available resources to assist the Town during the Local Emergency in accordance with emergency plans or at the direction of the Governor.

(13-04, Added, 11/21/2013)

### **Section 3-5-6 Immunity of Town and Representatives Thereof**

- A. The Town shall not be liable for any claim based upon the exercise or performance, or the failure to exercise or perform a discretionary function or duty on the part of the Town or any employee of the Town, except willful misconduct, gross negligence or bad faith of any such employee, in carrying out the provisions of ARIZ. REV. STAT., Title 26, Chapter 2.
- B. The immunities from liability, exemptions from laws, ordinances and rules, all pensions, relief, disability workmen's compensation and other benefits which apply to the activity of officers, agents or employees of the Town when performing their respective functions within the limits of the Town shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this Article, excepting willful misconduct, gross negligence or bad faith.
- C. Volunteers duly enrolled or registered for services in a Local Emergency, a State of Emergency or a State of War Emergency in carrying out, complying with or attempting to comply with, any Regulations issued pursuant to ARIZ. REV. STAT., Title 26, Chapter 2 or any local ordinance, or performing any of their authorized functions or duties, or training for the performance of their authorized functions or duties, shall have the same degree of responsibility for their actions and enjoy immunities as officers and employees of the state and its political subdivisions performing similar work.

(13-04, Added, 11/21/2013)

**Section 3-5-7 Violations**

It is unlawful for any person to violate any provision of this Article or to refuse or willfully neglect to obey any lawful regulation or order issued as provided in this Article. This provision, however, does not apply to the refusal of any private organization or members thereof to participate in an Emergency, Local Emergency or State of Emergency as defined by this Article.

(13-04, Added, 11/21/2013)